

REMARKS

Claims 33, 35-47, 50-55, 57-60, 62, and 64-78 are pending in this application. Claim 64 is withdrawn from consideration by the Examiner. By this Amendment, claims 34, 48, 49, 56, 61, and 63 are canceled, claims 33, 37, 39, 40-44, 47, 50, 52, 57, 58, 60, and 62 are amended, and claims 65-78 are added. Support for the amendments may be found, for example, in the original claims and in the specification at page 11, lines 28-31. No new matter is added.

In view of the foregoing amendments and following remarks, reconsideration and allowance are respectfully requested.

I. Restriction and Election of Species

Applicants hereby confirm the provisional election of Group I (claims 33-63) and the species (4E, 6E)-7-[3-(3,4-bishydroxymethylbenzyloxy)phenyl]-3-ethylnona-4,6-dien-3-ol as the active ingredient, with traverse. All pending claims read on and are generic to the elected.

A priori unity of invention exists because all of the claims share the common technical features of claim 33. Furthermore, *a posteriori* unity of invention exists because the common technical features distinguish over the applied references. Specifically, claim 64 depends from claim 33 and, thus, distinguishes over the applied references for at least the same reasons discussed below with respect to claim 33. Accordingly, claims 33 and 64 have unity of invention.

Thus, withdrawal of the Restriction and Election of Species Requirement is respectfully requested.

II. Rejections Under 35 U.S.C. §112

The Office Action rejects claims 34, 37, 39, 40-44, 47, 50-52, 58, and 60-63 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. By this Amendment, claims 34, 61, and 63 are canceled, rendering their rejection moot. With respect to the rejection of claim

40 for reciting "vitamin D and its derivatives," Applicants respectfully assert that this limitation is supported and specifically described in the specification, on pages 3-7. There is therefore no ambiguity that Applicants would benefit from, as asserted by the Office Action. The remaining claims have been amended to overcome the rejections. Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

III. Rejection Under 35 U.S.C. §101

The Office Action rejects claim 63 under 35 U.S.C. §101 for being in improper process claim format. By this Amendment, claim 63 is canceled, rendering the rejection moot. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

IV. Rejections Under 35 U.S.C. §102

The Office Action rejects the following claims under 35 U.S.C. §102(b) as being anticipated by the following references: (1) claims 33-39, 42, 45-50, 52-57, and 59-61 over U.S. Patent No. 5,654,362 to Schulz et al. ("Schulz"); (2) claims 33-38, 42, 44-46, 54-57, and 59-62 over U.S. Patent No. 5,929,164 to Zhang et al. ("Zhang"); and (3) claims 33, 35-47, and 53-62 over U.S. Patent No. 6,503,519 to Sakuta ("Sakuta"). By this Amendment, claims 34, 48, 49, 56, and 61 are canceled, rendering their rejection moot. As to the remaining claims, Applicants respectfully traverse the rejection.

Claim 33 recites, *inter alia*: "An anhydrous pharmaceutical composition comprising at least one active ingredient and a silicone agent comprising at least one organopolysiloxane elastomer and a thickening agent different from the silicone agent ... said thickening agent being a hydrocarbon-based wax of animal, plant, mineral or synthetic origin, or a mixture thereof, said composition also comprising at least one agent for promoting the penetration of the active ingredient into the skin." The applied references do not disclose each and every of the above features of claim 33.

1. Schulz

Schulz is directed to methods of thickening silicone oils or other solvents to gel-like consistency. *See* Schulz, column 1, lines 42-43. However, as acknowledged by the Office Action on page 15, Schulz is silent regarding a composition "comprising at least one agent for promoting the penetration of the active ingredient into the skin," as recited in claim 33. Furthermore, Schulz fails to teach "a thickening agent different from the silicone agent ... said thickening agent being a hydrocarbon-based wax of animal, plant, mineral or synthetic origin, or a mixture thereof," as recited in claim 33. Thus, for at least these reasons, Schulz fails to disclose each and every limitation of claim 33.

Accordingly, Schulz does not anticipate claim 33. Claims 35-39, 42, 45-47, 50, 52-55, 57, 59, and 60 variously depend from claim 33 and, thus, also are not anticipated by Schulz.

2. Zhang

Zhang is directed to methods for the quenching of post cure occurring in the thickening of siloxanes with silicone elastomers. *See* Zhang, column 1, lines 17-19. Zhang fails to disclose an "anhydrous pharmaceutical composition combining at least one active ingredient and a silicone agent comprising at least one organopolysiloxane elastomer and a thickening agent different from the silicone agent," let alone "said thickening agent being a hydrocarbon-based wax," as recited in claim 33. Furthermore, Zhang fails to disclose a composition "comprising at least one agent for promoting the penetration of the active ingredient into the skin," as recited in claim 33. As such, Zhang fails to disclose each and every feature of claim 33.

Accordingly, Zhang does not anticipate claim 33. Claims 35-38, 42, 44-46, 54, 55, 57, 59, 60, and 62 variously depend from claim 33 and, thus, also are not anticipated by

Zhang. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

3. Sakuta

Sakuta is directed to a dermatic cosmetic material in which is mixed a paste composition comprising a three-dimensionally cross-linked silicone polymer and a silicone oil. *See* Sakuta, column 1, lines 5-8. However, Sakuta fails to disclose an "anhydrous pharmaceutical composition combining at least one active ingredient and a silicone agent comprising at least one organopolysiloxane elastomer and a thickening agent different from the silicone agent," let alone "said thickening agent being a hydrocarbon-based wax," as recited in claim 33. To the contrary, the "thickening agent" in the composition of Sakuta is the silicone agent itself, rather than being "different from the silicone agent," as required by claim 33. *See* Sakuta, column 4, lines 17-20. Thus, for at least the above reasons, Sakuta fails to disclose each and every limitation of claim 33.

Accordingly, Sakuta does not anticipate claim 33. Claims 35-47, 53-55, 57-60, and 62 variously depend from claim 33 and, thus, also are not anticipated by Sakuta.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

V. Rejection Under 35 U.S.C. §103

The Office Action rejects the following claims under 35 U.S.C. §103(a) as having been obvious over the following asserted combinations of references: (1) claims 33-62 over Schulz in view of Sakuta; and (2) claims 33-62 over Zhang, in view of Sakuta and Schulz. By this Amendment, claims 34, 48, 49, 56, and 61 are canceled, rendering their rejection moot. As to the remaining claims, Applicants respectfully traverse the rejections.

Deficiencies of the individual applied references are discussed above. However, simply combining the applied references fails to cure deficiencies with respect to claim 33.

Specifically, even in combination, the applied references fail to disclose or teach "a thickening agent different from the silicone agent," let alone "the thickening agent being a hydrocarbon-based wax of animal, plant, mineral or synthetic origin, or a mixture thereof," as recited in independent claim 33.

The Office Action addresses this feature, with respect to the Zhang reference, by stating that while "Zhang also does not explicitly disclose incorporation of a hydrocarbon-based compound, such as hydrocarbon-based waxes ... it was well-known at the time of the instant invention that glyceryl behenate is a suitable emollient/skin conditioning agent for use in cosmetic formulations." *See* Office Action, page 17. Applicants disagree with this line of reasoning.

Firstly, Zhang fails to teach a composition according to claim 33 altogether, as it is merely directed to method of quenching. Furthermore, Zhang does not establish a reason or rationale to use hydrocarbon-based waxes, whether known in the art or not, as such a feature is not required. The additional references applied by the Office Action furthermore provide absolutely no incentive for the skilled artisan to use a wax, as recited in claim 33.

Specifically, the composition of Schultz does not teach using a thickening agent that is different from the silicone agent and, even more, fails to teach the thickening agent being a hydrocarbon-based wax of animal, plant, mineral or synthetic origin, or a mixture thereof, as recited in claim 33. Furthermore, according to Sakuta, mixing waxy ingredients in a nonaqueous composition results in a tacky feel arising from the waxy ingredients that is difficult to eliminate even when silicon oils are employed. *See* Sakuta, column 1, lines 37-41.

This problem is addressed in the present disclosure, stating that it was "surprisingly" discovered that it is possible to use the hydrocarbon-based compounds as thickening agents, and in particular waxes, which are well known to be relatively incompatible with silicone compounds. *See* specification, page 15, lines 14-17. This "common knowledge" mentioned

in the specification is in line with the teachings of the applied references, which make no mention of using hydrocarbon-based compounds as thickening agents, let alone waxes. Thus, the claimed compound was formulated contrary to such "common" knowledge. In fact, as further explained in the specification, this is one of the problems solved by the inventors, which is not addressed by any of the applied references.

Therefore, contrary to the assertions made by the Office Action, the skilled artisan would not have had a reason or rationale to use a wax as a thickening agent.

For at least the reasons discussed above, the asserted combinations of references would not have rendered obvious claim 33. Claims 35-47, 50-55, 57-60, and 62 variously depend from claim 33 and, thus, also would not have been rendered obvious by the asserted combinations of references for at least the same reasons. Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

VI. New Claims

By this Amendment, new claims 65-78 are presented. New claims 65-78 variously depend from claim 33 and, thus, patentably distinguish over the applied references for at least the reasons discussed above. Prompt examination and allowance of claims 65-78 are respectfully requested.

VII. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Attachments:

Amendment Transmittal
Petition for Extension of Time

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